(9)

No. 05-785

SUPREME COURT, U.S.
FILED
JUN 22 2006
OFFICE OF THE CLERK

In The
Supreme Court of the United States

THOMAS L. CAREY, WARDEN,

Petitioner,

v.

MATHEW MUSLADIN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed December 15, 2005
Certiorari Granted April 17, 2006

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Declaration of Frank Taranto, filed October 15, 1999, as Supplement to Exhibit C to Petition for Writ of Habeas Corpus filed June 16, 1999, in California Supreme Court..... 8

The following opinions, decisions, judgments, and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the Petition for Writ of Certiorari:

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

June 5, 2000 – Petition for writ of habeas corpus filed in United States District for the Northern District of California

May 14, 2001 – Answer, memorandum of points and authorities in support of answer, and notice of lodging exhibits with court filed in district court

August 16, 2001 – Traverse to answer filed in district court

May 14, 2003 – Order denying petition for writ of habeas corpus filed in district court

June 12, 2003 – Notice of appeal and motion for certificate of appealability filed in district court

September 2, 2003 – Order granting and denying in part certificate of appealability filed in district court

December 10, 2003 – Judgment entered in district court

February 23, 2004 – Petitioner-appellant's brief filed in the United States Court of Appeals for the Ninth Circuit

May 17, 2004 – Respondent-appellee's brief filed in court of appeals

June 15, 2004 – Petitioner-appellant's reply brief filed in court of appeals

April 8, 2005 – Published opinion reversing judgment, with dissent, filed in court of appeals

April 22, 2005 – Respondent-appellee's petition for rehearing with suggestion for rehearing en banc filed in court of appeals

October 21, 2005 – Published opinion reversing judgment, with dissent, and published order withdrawing April 8, 2005, opinion filed in court of appeals

October 21, 2005 – Published order denying petition for panel rehearing and rehearing en banc, with dissents, filed in court of appeals

October 27, 2005 – Order granting respondent-appellee's motion to stay mandate pending petition for writ of certiorari filed in court of appeals

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TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

PEOPLE AND RESPONDENT,

VS.

MATHEW GUY MUSLADIN,

DEFENDANT AND APPELLANT. /

October 16, 1995

VOLUME III

(Pages 364-537)

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA, IN
AND FOR THE COUNTY OF SANTA CLARA
HONORABLE PAUL R. TEILH, JUDGE
JURY TRIAL

* * *

[439] San Jose, California October 16, 1995

PROCEEDINGS

THE COURT: Someone have something else to put on the record?

MR. TARANTO: Yes, Your Honor. Thank you. Only that a man - - Your Honor, we briefly spoke in chambers. And this is about this matter and I just want to put on the record, Your Honor. This is in all due respect to the Studer family who is present here in the courtroom.

I think it's inappropriate. They are wearing buttons that show a photograph of the decedent. I would like to just say for purposes of the record, Your Honor, this is a jury trial. If it was a court trial, I wouldn't mind. As jurors sit here, they have natural feelings and natural passions. They could be inflamed over the fact that there was a photograph on Ms. Studer's breast or photograph of the decedent on Mr. Studer's chest or on the brother's chest. I just think it's inappropriate, Your Honor. I would like to have - - they can stay here. There is no problem with that.

THE COURT: I understand that. The button has nothing except a photograph?

MR. MENDOZA: That's correct, Your Honor.

THE COURT: The jury's already been instructed not to let passion or prejudice influence their verdict and they will again be instructed at the close of the case on the same subject. There is no legend on the buttons. I see no [440] possible prejudice to the defendant. The motion to have those removed is denied.

MR. TARANTO: Your Honor, is there a ruling, I think, in the alternative, any slogans or anything worn by the decedent's family, you would decide how that is handled, is that correct?

THE COURT: I have already inquired whether there was any legend other than the photograph. Apparently there is not.

MR. MENDOZA: That's correct, Your Honor. I object. That issue is not right, I don't think. If it is going to happen, if it should happen, I will bring it to the attention of the Court.

MR. TARANTO: Thank you, Your Honor.

THE COURT: Bring in the jury please, Mr. Bailiff.

(Jury brought into the courtroom and proceedings were had as follows:)

THE COURT: Let the record show all jurors are present.

Do you wish to make an opening statement, Mr. Mendoza?

MR. MENDOZA: Yes, Your Honor. Thank you.

Good afternoon, ladies and gentlemen of the jury.

Again, my name is Ray Mendoza and I represent the People of the State of California in this particular case.

* * *

No. S079768

IN THE SUPREME COURT OF CALIFORNIA

IN RE MATHEW MUSLADIN

on

HABEAS CORPUS

[Exhibit F to Petition for Writ of Habeas Corpus]

DECLARATION OF BETTY MUSLADIN

I, Betty Musladin, declare as follows:

1) I am the mother of Guy Musladin, defendant in *People v. Musladin*, Santa Clara County Number 177400. I attended the trial.

2) I saw the display buttons worn by members of Tom Studer's family. These buttons were several inches in diameter; my best guess is that they were 3 to 4 inches in diameter. They contained a picture of Tom Studer on them.

3) The members of his family that wore these buttons included his mother, father and brother. My recollection is that they all attended the entire trial, sitting immediately behind the district attorney and adjacent to the jury box. I also recall that Pam Musladin, Pam's mother, and Michael Albaugh wore the buttons during the first day of jury voir dire.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Executed this 14 day of June in Fair Oaks, California.

/s/ Betty Musladin
Betty Musladin

No. S079768

IN THE SUPREME COURT OF CALIFORNIA

IN RE MATHEW MUSLADIN

on

HABEAS CORPUS

[Supplement to Exhibit C to Petition for Writ of Habeas Corpus]

DECLARATION OF FRANK TARANTO

I, Frank Taranto, declare as follows:

1) I am an attorney practicing in San Jose, California. I represented Guy Musladin at trial in *People* v. *Musladin*, Santa Clara County No. 177400.

2) Prior to trial, I noticed that several members of Tom Studer's family were wearing buttons with his photograph on them. This included his mother, father and brother. The buttons were approximately 2 inches in diameter and very noticeable.

3) I made an oral motion on Guy's behalf to direct the members of the family to remove the buttons. This motion was denied.

4) The family members sat in the front row of the courtroom, right behind the district attorney. Although it is possible that one or more of the family may have missed a day of the trial, my memory is that they were there every day of the trial.

* * *

/s/ Frank S. Taranto
Frank Taranto, Esq.